



Report of the Appointed Person for England and Wales under sections 47I, 291 and 303F of the Proceeds of Crime Act 2002 and under article 17H of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 for the period 01.04.22 until 31.03.23.

October 2023

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Presented to parliament pursuant to section 291(5) of the Proceeds of Crime Act 2002 and Article 17H of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005

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The Proceeds of Crime Act 2002 (POCA)

This legislation was enacted to empower police and other law enforcement agencies to investigate, search and seize the apparent assets obtained by persons and organisations by criminal activity. Assets include cash, realisable property and “listed assets” (e.g. precious metals). Recovery procedures include, *inter alia*, confiscation upon a criminal conviction, forfeiture, freezing of accounts and real property, taxation and civil recovery from persons not convicted in the courts. The Act includes anti-money laundering legislation.

POCA 2002 (External Requests and Orders) Order 2005

This Statutory Order was made under Sections 444 and 459(2) of POCA. Generally, it provides powers for the freezing of property which may be needed to satisfy requests from other countries for the recovery of criminal assets. It also enables registration and enforcement of overseas confiscation orders. The powers and obligations are similar to those for search and seizure for domestic investigations.

The Appointed Person¹

This is the person who has been appointed to oversee those circumstances where the exercise of these powers by appropriate officers has been carried out without judicial authority, even though a superior officer gave approval. The Appointed Person must be independent and not be employed under, or for the purposes of, any government department.

An appropriate officer must file a written report to the Appointed Person where assets are seized but not detained for more than 48 hours and where no assets are seized. The report must set out

¹ Proceeds of Crime Act 2002 sections 47H(4-5), 290-291 and 303E-F

why they believed the powers were exercisable and why it was not practicable to obtain prior judicial approval². In accordance with the Code of Practice³, the report should be made as soon as practicable and, in all cases, within 14 days.

The Appointed Person must file an annual report with the Secretary of State, giving their opinion as to the circumstances and manner in which these powers were exercised without judicial approval. The report may make any recommendations the Appointed Person considers appropriate⁴.

Searches and seizures

The Act sets out very detailed requirements before an appropriate officer can carry out searches for and seizures of assets. It has been amended and added to on many occasions since 2002 by widening and strengthening the powers afforded to such officers. The original Act provided for search and seizure of cash (which is widely defined)⁵ but now includes defined realisable property⁶ and listed assets⁷. It excludes items required by the owner for work or domestic living purposes. Searches may be of a person, on premises or (under strict conditions) a vehicle.

Searches must be authorised in advance by a Justice of the Peace or, if one is not available, by a senior officer of a specific rank above that of the searching officer. However, as stated above, circumstances may arise in an investigation where, practicably, neither authority can be obtained.

Similar provisions are contained in articles 17A-17S of the Statutory Order for external requests.

If apparent assets are seized and are to be detained, with or without judicial approval for the search, an application must be brought before a court for continued detention within 48 hours of

² Proceeds of Crime Act 2002 sections 47H, 290 and 303E

³ Proceeds of Crime Act 2002 sections 47S, 292 and 303G

⁴ Proceeds of Crime Act 2002 sections 471, 291 and 303F

⁵ Proceeds of Crime Act 2002 sections 289-293

⁶ Proceeds of Crime Act 2002 sections 47B-F

⁷ Proceeds of Crime Act 2002 sections 303B-F

the seizure. Consequently, there is judicial oversight thereafter for a maximum of two years.

Appropriate Officers

These are defined under section 47A (for realisable property) as an officer of HM Revenue and Customs (HMRC), an immigration officer, a constable, a Serious Fraud Office officer and an accredited financial investigator (AFI). Officers of the National Crime Agency who are designated to have the powers of one or more of a constable, officer of HMRC, immigration officer or general customs official or who are accredited financial investigators are included⁸.

Sections 289 and 291 (for recovery of cash) and sections 303C and 303J (for listed assets) authorise those same officers, except immigration officers, to exercise the powers of search and seizure. Although not called “appropriate officers” in those sections, this report will use that term for convenience.

The provisions of sections 303B-J came into force on 16.04.18, having been enacted by the Criminal Finances Act 2017.

External Requests and orders

Provisions are made for similar search and seizure powers and reporting to the Appointed Person under the Statutory Order mentioned above. Immigration officers are excluded.

Reports received during 01.04.22 until 31.03.23

During this period, I received seven reports of police searches under sections 47D-F, 289 and 303C, resulting in nothing seized or seizures under sections 47C, 294 and 303J respectively for which prior judicial approval had not been obtained. As stated above, an application must be made to a magistrates’ court within 48 hours for the continued detention of the assets otherwise they must be returned.

All but one seizure had received senior officer approval from an inspector or more senior rank, as required.

⁸ Crime and Courts Act 2013 section 10(1)(a)

Cryptocurrency featured in three cases and appears to be becoming popular in the criminal world. Currency is deposited in wallets which require a series of codewords (seeds) to be opened. Once opened, currency can be transferred to other accounts instantly. Suspects who are owners of the currency may inform other persons of the seeds and advise them that, following a seizure of a wallet by e.g. police, the authorities could transfer the cryptocurrency into a police or other official account to protect the removal from the wallet. Speed in accessing the accounts is vital for the authorities.

Cryptocurrency automatic teller machines (CATMs) exist which can convert cryptocurrency into normal cash. However, the owner of such a machine must register it with the authorities and obtain a license to operate it.

In one case, officers carried out surveillance of a series of premises and were aware that a CATM was in operation in one building. Rather than delay a search by seeking judicial approval, the officers obtained a senior officer approval and then carried out a search within one hour. The speed of this avoided any tipping off by users of the CATM or others which could have resulted in the machine being moved.

In each of the two other cases, following a search for drugs which proved successful, a person suspected to supplying substantial quantities of drugs was found to be in possession of at least one cryptocurrency wallet. The wallets were rebuilt by police using the seeds and the currency seized. A senior officer had given approval. Again, the delay incurred in making an application for judicial approval to search the wallets could have resulted in the loss of the currency.

In another case, patrolling police received intelligence that two persons were travelling in a car in which there was a large amount of cash. They were detained and searched but the cash was fully accounted for. A senior officer was not sought because of the urgency.

A fifth case involved a search for drugs which proved successful. In the course of the search, two vehicles were seized but later

were found to be registered to a third party. The vehicles were released but were subject to other procedures.

In another case, a successful drugs search resulted in a large quantity of valuable designer clothing and footwear being discovered on the suspects premises. A senior officer gave approval for the items to be seized as it was not suspected by police that they would have been on the premises and so no judicial approval for their seizure was sought.

Commentary

Some may consider that seven cases in one year is a low number. However, it must be borne in mind that almost all searches under POCA will be well prepared in advance and based on sound evidence, information and intelligence. Such planned searches, some of which may not have prior judicial approval because of urgency, will usually result in seizures which are notified to the court within 48 hours. They do not need to be reported to the Appointed Person as the assets seized will be decided upon by the Court.

As outlined in the cases above, officers commence a search for drugs which results in the discovery of assets including cash, vehicles or other assets of which the officers had no knowledge.

In addition, police and other agencies can often use the provisions of the Police and Criminal Evidence Act 1984 (sections 8 and 19) and the Misuse of Drugs Act 1971 (section 23) to search for evidence which they may seize if it is relevant to the investigation.

Recommendations

Having considered the reports, I am satisfied that the criteria for justifying the searches without prior judicial approval were met and that the powers of search were exercised appropriately. Following my recommendation in last year's report, the Home Office designed a standardised form with guidance notes for use by all the police constabularies and other enforcement agencies for these reports. I was pleased to see that almost all of the reports were delivered using the form.

Greg McCourt, Appointed Person.

August 2023

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